

## **APPEAL A DECISION OR ACTION (TAB)**

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## **APPEAL A DECISION OR ACTION**

The purpose of this chapter is to describe the process for appeal of an official decision or an administrative action. Appeal of an ordinance provision is not covered in this section. Appeal of an administrative decision or interpretation must apply to a gray area of the ordinance.

### **Zoning Board of Adjustment (35-481)**

The Zoning Board of Adjustment (called the Board of Adjustment) is a quasi-judicial body that is made up of eleven members (and six alternates) created by state law with specific powers under Chapter 211.009 of the Local Government code. The Board's purpose is:

- To hear and decide appeals to the Unified Development Code and Sign Code.
- To hear and decide special exceptions to the terms of the Zoning ordinance.
- To hear and decide alleged errors in an order, requirement or determination made by an administrative official.

### **Steps to Appeal Submittal**

1. Submit an application to the Director for the specific appeal being requested along with the required plans and documents and pay the filing fee Staff will advise applicant of the procedure and burden of proof that will be required of them.
2. Completeness Review

### **Processing of Board Cases**

- Once application is accepted, the alleged violation is verified.
- Mailing list is developed for legal notification of property owners within 200'.
- Notification is sent at least 10 days prior to the hearing.
- Staff creates maps and a video of the land, then a staff recommendation is drafted.

### **Information to the Public**

- Staff can notify an interested citizen of a Board of Adjustment case in their neighborhood.
- All Case files are public record and may be viewed by the public during normal business hours.
- Neighborhood groups are encouraged to take part in these decisions at the public hearings

### **Neighborhood Involvement**

- Neighborhoods can insure their involvement in the process by being listed in the Directory of Neighborhood Associations and registering with the Planning Department.
- Contact the Neighborhood Resource Center of San Antonio, which is sent an agenda.
- Contact the Board of Adjustment staff for information.

## **Zoning Variance (35-482)**

1. Submit an application to the Director for the specific appeal being requested along with the required plans and documents and pay the filing fee Staff will advise applicant of the procedure and burden of proof that will be required of them.
2. Completeness Review (2 working days)
3. Director will submit to the Board of Adjustment and Schedule a public hearing.

## **Sign Appeal Process**

The Board of Adjustment may hear appeals, for on premise signs only, for variance and interpretations to Article IX of Chapter 28 of the City Code and make recommendations to the Director of Development Services in accordance with Section 28-246. However, no variance shall be granted that would eliminate the distinctions between sign types and sizes by zoning district, street classification or like areas of legislative prerogative.

### Appeal for a Variance to Board of Adjustment

Section 28-247. Variance and Appeals Procedures.

The Board may recommend that a variance be granted from the application of this article if it finds that:

1. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping or topography; or
2. A denial of the variance would probably cause a cessation of legitimate, long-standing active commercial use of this land; and
3. After seeking one or more of the findings set forth in subparagraphs (1) or (2), the board finds that:
  - (a) Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated
  - (b) Granting the variance will not have a substantially adverse impact upon neighboring properties
  - (c) Granting the variance will not substantially conflict with the stated purposes of this article.

The recommendation to modify the interpretation of the Chief Electrical Inspector or the recommendation to grant a variance shall require a 3/4-majority vote in favor of the appellant by the appointed members of the Board. In no event shall the Board conduct business with less than nine appointed members present.

### Appeal to City Council

An interested party may appeal the decision of the Director to grant or deny a variance request to City Council. An appeal to the City Council shall be initiated by filing a letter and \$300.00 fee with the City Clerk within five working days after a decision of the Director indicating that the applicant seeks to appeal the decision of the Director to the City Council. Appellants, other than the applicant, must own or lease land within 1,000 feet of the affected land.

## Submittal Requirements

Submit a site plan drawn to scale, showing the location of the sign(s), existing or proposed buildings, required setbacks, spacing and any easements that may have a bearing on this appeal. A check in the amount of \$300.00, made payable to the City of San Antonio, must be submitted with the appeal application to the Department of Development Services, Board of Adjustment office.

## Variance Provisions for Signs

City Council may determine that a variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of the site such as its dimensions, landscaping, or topography. The City Council shall consider all the circumstances of the variance request, including the factors outlined in the variance provision, and make its determination by simple majority vote.

## Planning Commission Variances

The Planning Commission may grant variances to the requirements of the UDC regarding subdivisions (35-483) and development plats (35-484) if it concludes that strict compliance would result in practical difficulties or unnecessary hardships for the applicant, and that by granting the variance, the spirit of the UDC will be observed. Variances to plats and any associated plans and profiles shall be granted by the Planning Commission only in conjunction with the consideration of the proposed plat for approval.

## Steps to Variance Appeal

1. Submit to the Director of Development Services a letter specifying the section for which a variance is requested and stating the grounds for the request along with all supportive facts upon which a variance might be warranted.
2. Completeness Review (5 days)
3. Decision (Administrative or Public Hearing)

## City Council

### Zoning

An applicant who wishes to submit a zoning change request to the City Council for its consideration where the Zoning Commission has recommended denial shall make such a request in writing to the Director of Development Services.

All applications for a change in zoning which the Zoning Commission has considered shall be presented to the City Council within six (6) months from the date of the Commission's final consideration. The filing fee shall accompany the application. In the event the applicant fails to

present the application for rezoning to the City Council within the prescribed period, a new original application and fees are required.

## **Appeal Procedures for Sexually Oriented Business (35-488)**

Appeal to the Board of Adjustment

Appeal to District Court

## **Appeals Boards**

### **Building and Fire Code Board of Appeals**

Interpretations of gray areas in the building code or fire code by the field inspector or use of alternative materials decisions by plan reviewers may be appealed to supervisors then to the Chief Inspector, then to the Director of Development Services. If not resolved, an appeal may be made to the Board. If still not resolved, an appeal may go to City Council.

### **Electrical Examining and Supervising Board of Appeals**

Interpretations of gray areas in the electrical code by the field inspector or use of alternative materials or equipment decisions by plan reviewers may be appealed to supervisors then to the Chief Inspector, then to the Director of Development Services. If not resolved, an appeal may be made to the Board. If still not resolved, it may be appealed to City Council.

### **Mechanical Board of Appeals**

Interpretations of gray areas in the mechanical code by the field inspector or use of alternative materials or equipment decisions by plan reviewers may be appealed to supervisors, then to the Chief Inspector, then to the Director of Development Services. If not resolved, an appeal may be made to the Board. If still not resolved, it may be appealed to City Council.

### **Plumbing Appeals and Advisory Board**

Interpretations of gray areas in the plumbing code by the field inspector or use of alternative materials or fixtures decisions by plan reviewers may be appealed to supervisors then to the Chief Inspector, then to the Director of Development Services. If not resolved, an appeal may be made to the Board. The Plumbing Appeals and Advisory Board decision is final.

### **Home Improvement Advisory Board**

The Board shall make recommendations to the Director of Development Services in all matters relating to the enforcement and application of the Home Improvement Contractors licensing ordinance and shall advise the Director of Development Services as to the approval or denial of each application for a license and cancellations of licenses as provided. An appeal of the decision may be made to City Council.

### **Historic Design and Review Commission**

The Commission is advisory to the Director of Planning. If an applicant is dissatisfied with the action of the Commission and the Director of Planning, an appeal may be made to the City Council within thirty (30) days after receiving notification of such action.